

Notes from the Caltrans Statewide PA Teleconference 1-11-05

Opening remarks

Participants from Headquarters (HQ) included: Dorene Clement, Anmarie Medin, Jill Hupp, Glenn Gmoser, Gloria Scott, Darrell Cardiff, and (by phone) Bob Pavlik.

Jill welcomed everyone in Greg's absence and thanked the large group for their participation.

PA Consistency Report: Glenn noted that the report on our performance for the first six months of the PA had been distributed to the Districts. Contact Dorene if you have not yet seen a copy. We will also post it on the Cultural intranet page.

Annual Report: Glenn asked the hypothetical question - would any Districts be able to pull together the data needed for the Annual Report by tomorrow? (Silence). A handout outlining the data required for the Annual Report was included in the PA training materials. Some Districts noted that they did not get this handout. Jill will send a copy to the HRCs after the meeting.

Action items from last meeting – follow up

Updated PA training materials: Anmarie distributed updated binders to each District. If yours is missing any other materials, please let us know. We will also post the materials on the Cultural intranet webpage.

Revised HPSR short form: Gloria said the revisions were still undergoing internal review by CCSO seniors. She will look into moving it forward again.

Topical Discussion: Standard Conditions

Q. I have a project that involves doing pile driving adjacent to a very fragile historic building. Attachment 5, Environmentally Sensitive Areas, states that establishing an ESA for monitoring construction to prevent direct physical damage is an acceptable condition for built resources. Specifically it states: "ESAs may be applied to built environment properties only when deemed appropriate by a Principal Architectural Historian."

I believe that an ESA (monitoring for vibration levels) can protect the historic structure from any adverse effect caused by vibration. So, do you agree that a finding of No Adverse Effects with Standard Conditions is appropriate for this undertaking?

A. (Jill): No. The Standard Condition provision for ESAs applies only to archaeological properties. If you read on in Attachment 5, it also states "Delineation of an ESA may be used as an element of protection for non-archaeological properties when specifically provided for by a condition in a finding of No Adverse Effect *without* Standard Conditions pursuant to Stipulation X.B.1. . . ."

In other words, *supposing* monitoring can indeed protect the building from adverse effects due to noise vibration, the ESA could be a condition you might impose to reach a finding of No Adverse Effect, but it would be No Adverse Effect **without** standard conditions.

If you go back to the Stipulation, X.B.2, you'll see the Standard Condition stipulation is very limited. SHPO and FHWA were willing to agree to include this provision, because it is so very specific - if you don't have one of those two specific situations, the Standard Conditions do not apply.

Valerie Levulett (D5): That's why we do noise studies in advance. If the level will be too high, it's an adverse effect.

Marty Rosen (D11): I don't think monitoring can protect it, because by that point the damage would already be done. We have a project involving an adobe structure and are looking at noise vibration as an adverse effect and provide a contingency for any damage in an MOA.

Bob Pavlik: I agree it should be treated as an adverse effect.

Jill: Certainly. The main point to remember here is that an ESA is not a *standard* condition for built environment properties.

Q. What do we do when we want to use the Standard Conditions for rehab, but we need to have the plans reviewed to confirm that they meet the conditions, and we can't get the funding to prepare plans until after we've completed 106? It's a Catch 22, isn't it?

A. (Dorene): When this first came up we asked SHPO what we should do and they had suggested that an MOA is appropriate when we don't have enough information from plans and specs to say that a project will meet the Standard Conditions. FHWA didn't like that idea because it meant they had to consider 4(f). So HQ had a meeting with FHWA and SHPO and discussed other solutions. What came out of the meeting is that Jill is developing a new attachment to the PA that will allow Caltrans PQS to complete follow-up reviews of plans as they become available. The responsibility remains with Caltrans PQS, but unlike the current process, provides a contingency for situations where the Standards cannot be met after all.

The attachment will outline Caltrans' conditions for ensuring that the Secretary of the Interior's Standards for Rehabilitation (SOIS) will be met. If we can't ensure consistency with the SOIS after all, or if there are unforeseen circumstances once the project work starts and the SOIS cannot be met, Caltrans will have to reopen Section 106 consultation and consult with FHWA and SHPO to resolve adverse effects. As it is, the PA does not require consultation with SHPO for a No Adverse Effect with Standard Conditions finding; Caltrans makes the determination and provides notification to SHPO and FHWA, then Section 106 is concluded.

Q. What is the difference between it being a standard or a non-standard condition when using ESAs? Would Native American concerns about a property make a difference in applying an ESA, as either standard or non-standard?

A. (Glenn): The ESA is a tool that is used in variety of circumstances: as Standard Conditions when applied in accordance with Attachment 5; as non-Standard Conditions; and as elements of resolving adverse effects in an MOA.

The ESA is a “standard” condition of a No Adverse Effect (NAE) finding, which only requires notifying SHPO and the FHWA when all the information required in Attachment 5 is sufficiently documented with enough information about the property, any Native American concerns in relation to the project effects, and an ESA action plan. This will typically be in a stand-alone NAE finding or as a chapter/attachment to the HPSR. Most importantly, this applies when this is the only effect of the project. If other properties are being adversely affected or require *non-standard* conditions to be imposed, then the finding of the project as a whole will be elevated to No Adverse Effect *without* Standard Conditions or Adverse Effect and consultation with SHPO through FHWA is required.

The ESA can be an element of resolving effects to part of a property, or as a means of treating particular properties in a project while others may be effected and need further mitigation. For example, if part of the site were to be damaged but the rest could be protected, the ESA for the protected part of the site would be an element of resolving effects to that site. It would be a “nonstandard” NAE condition if SHPO agreed though consultation that the portion of the site that would be lost was marginal to the property as a whole and we could live with the consequences if we protected the rest.

If we are mitigating part of a site, and protecting the rest with an ESA, or if we are protecting some sites with ESAs while mitigating others, then the ESAs would be elements of an MOA arising from a consultation to resolve adverse effects.

The Native American concerns come into play in all the scenarios and must be documented and addressed. We can still use an ESA as a Standard Condition when we can document that the establishment of an ESA also protects the Native American values and concerns. Most importantly the stipulations of the PA allow us to establish these protections without having to disturb sites to “prove” their formal eligibility. We do, however, have to demonstrate that we know enough about the property to establish its limits and that our ESA will adequately protect the property from project activities. If the Native American concerns are still an issue then a more formal consultation and agreement to resolve those concerns is required.

It is possible that in the process of gathering information about a site, perhaps through an Ex. Phase I that we find that a site is not present where originally recorded or that a portion of the property we would otherwise protect does not contribute to its eligibility. We might ultimately find that NAE would be appropriate. In most cases this would require SHPO consultation to concur with our findings that the portion of the site is not eligible. We should not be trying to push the envelope on this, because ultimately we still need to have good defensible documentation of our findings. When we have that, consultations regarding our effects will not encumber the project or schedule.

Q. (Jeanne Binning -D6): Don't we have to consult FHWA if it is a non-standard condition?

A. (Glenn): Yes, absolutely.

APE Questions:

Jill: If there are no other questions on Standard Conditions, a couple of questions about APEs came in late yesterday afternoon. The next teleconference will be devoted to APEs, but since we have time I thought we could go over these two APE scenarios.

Q. In the event a proposed soundwall is to be placed in front of or near an existing highway that is on an embankment, and there is a frontage road in front of the first row of buildings, where is the APE boundary for architecture?

Similarly, in the event a proposed soundwall is to be placed in front of or near an existing highway that is depressed (in a trench), and there is a frontage road in front of the first row of buildings, where is the APE boundary for architecture?

A. (Jill): It depends of course, but in *most cases*, the frontage road would provide enough of a buffer between the houses and the soundwall, and I would recommend drawing the APE at the edge of the frontage road next to the proposed right of way. I would not include that first row of houses in the APE. There isn't any potential to affect them directly or indirectly.

Dorene: It would be different if they were putting up a large elevated structure where there had been an at-grade highway.

Jill: Right. For most of our projects, though where we're putting up a soundwall or replacing a soundwall there's no potential to affect adjacent buildings. It's the old "one row of properties beyond the right of way" rule of thumb that no longer applies.

PA Training:

Jill mentioned that she is working with Bob Pavlik to set up a PA Training session, primarily for the new staff that needs the training to be certified as PQS. The HRCs are also a targeted audience. It will be held in Sacramento, most likely in late March or April. PQS candidates can still do work under the PA in the meantime with oversight by someone who is certified.

SHPO Staff Changes:

Mike McGuirt has been appointed interim supervisor of the project review unit. Deputy SHPO Steve Mikesell is assisting him. They are both expected to attend the Quarterly Meeting this Thursday. Clarence Caesar's last day is January 14th. Kelley Hobbs of D6 will begin his rotation in the SHPO office this month.

Headquarters Action Items

Send copy of Annual Reporting Requirements handout to HRCs (Jill)
Finalize revised HPSR short form (Gloria, CCSO seniors)
Post PA Consistency Report on Cultural intranet page (Darrell)
Post PA training materials on Cultural intranet page (Darrell)